

1                               BELLSOUTH TELECOMMUNICATIONS, INC.  
2                               SUPPLEMENTAL DIRECT TESTIMONY OF CARLOS MORILLO  
3                               BEFORE THE TENNESSEE REGULATORY AUTHORITY  
4                               DOCKET NO 04-00046

5  
6                               October 29, 2004

7  
8       Q       PLEASE STATE YOUR NAME, YOUR POSITION WITH BELLSOUTH  
9               TELECOMMUNICATIONS, INC. ("BELLSOUTH"), AND YOUR  
10              BUSINESS ADDRESS.

11  
12     A.       My name is Carlos Morillo BellSouth as Director – Policy Implementation  
13               for the nine-state BellSouth region, employs me. My business address is 675  
14               West Peachtree Street, Atlanta, Georgia 30375.

15  
16     Q.       PLEASE PROVIDE A BRIEF DESCRIPTION OF YOUR BACKGROUND  
17               AND EXPERIENCE.

18  
19     A.       I graduated from West Virginia University in 1984 with Bachelor of Science  
20               degrees in Economics & Geology. In 1986, I received a Masters in Business  
21               Administration with concentrations in Economics and Finance from West  
22               Virginia University. After graduation, I began employment with Andersen  
23               Consulting supporting various projects for market research, insurance, and  
24               hospital holding companies In 1990, I joined MCI, Inc. as a Business Analyst  
25               My responsibilities included supporting the implementation of processes and

1 systems for various business products and services. In addition to my Business  
2 Analyst duties, I worked as a Financial Analyst evaluating the financial  
3 performance of various price adjustments as well as promotion deployment,  
4 including the state and Federal tariff filings. I was also a Product Development  
5 Project Manager supporting the deployment of business services. In 1994, I  
6 joined BellSouth International, as a Senior Manager of IT planning, and later  
7 became Director of Business Development. In 1999, I became Director of  
8 eCommerce in BellSouth's domestic operations and in 2002, Director of  
9 International Audit. I assumed my current position as Director - Policy  
10 Implementation and Regulatory Compliance in May of 2004.

11

12 Q. HAVE YOU PREVIOUSLY FILED TESTIMONY IN THIS PROCEEDING?

13

14 A. Yes. I filed direct testimony on June 25, 2004.

15

16 Q. WHAT IS THE PURPOSE OF YOUR SUPPLEMENTAL DIRECT  
17 TESTIMONY?

18

19 A. On July 15, 2004, the Parties filed a Joint Motion for Abeyance with the  
20 Tennessee Regulatory Authority ("Authority" or "TRA") where the Parties  
21 asked for 90 day abatement of the arbitration proceeding so that they could  
22 include and address issues relating to *United States Telecom Ass'n v. FCC*, 359  
23 F.3d 554 (D.C. Circuit 2004) ("USTA II") in this proceeding. During the 90-  
24 day abatement, the parties continued to negotiate, and as a result, several of the  
25 issues addressed in my June 25, 2004 direct testimony have been resolved.

1 The purpose of my supplemental direct testimony is to provide BellSouth's  
2 position on the remaining unresolved policy issues in this proceeding  
3 pertaining to Attachments 6 and 7 of the Interconnection Agreement.  
4 Specifically, my testimony addresses Issues 6-5, 7-1, 7-3, 7-5, 7-6, 7-7, 7-8, 7-  
5 9, 7-10 and 7-12.<sup>1</sup> These issues are summarized in the Revised Joint Issues  
6 Matrix filed by BellSouth and NewSouth Communications Corporation  
7 ("NewSouth"), NuVox Communications, Inc. ("NuVox"), KMC Telecom V.,  
8 Inc. ("KMC V") and KMC Telecom III LLC ("KMCIII") (together, "KMC"),  
9 and Xspedius Communications, LLC on behalf of its operating subsidiaries  
10 Xspedius Management Co Switched Services, LLC ("Xspedius Switched")  
11 and Xspedius Management Company of Chattanooga, LLC (Xspedius  
12 Chattanooga") (together, "Xspedius") on October 15, 2004. I henceforth refer  
13 to these companies as the "Petitioners."

14  
15 Q. HOW IS YOUR SUPPLEMENTAL DIRECT TESTIMONY ORGANIZED?

16  
17 A. My Supplemental Direct Testimony includes my original direct testimony  
18 verbatim for those issues that have not been resolved during the 90-day  
19 abatement period I have removed the discussion of those issues addressed in  
20 my direct testimony that have been subsequently resolved between the parties.

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<sup>1</sup> Note that issue 6-3(b), addressed in my direct testimony filed in this docket, has been adopted by Scot Ferguson

1 Q. DO YOU HAVE ANY PRELIMINARY COMMENTS?

2

3 A. Yes. There are numerous unresolved issues in this arbitration that have  
4 underlying legal arguments. Because I am not an attorney, I am not offering a  
5 legal opinion on these issues. I respond to these issues purely from a policy  
6 perspective. BellSouth's attorneys will address issues requiring legal  
7 argument.

8

9 *Item 88; Issue 6-5: What rate should apply for Service Date Advancement (a/k/a*  
10 *service expedites)? (Attachment 6, Section 2.6.5)*

11

12 Q. WHAT IS BELL SOUTH'S POSITION ON THIS ISSUE?

13

14 A. BellSouth's obligations under Section 251 of the 1996 Act are to provide  
15 certain services in non-discriminatory ("standard") intervals at cost-based  
16 prices. There is no Section 251 requirement that BellSouth provide service in  
17 less than the standard interval. Nor is there any requirement for BellSouth to  
18 provide faster service to its wholesale customers than to its retail customers.  
19 Because BellSouth is not required to provide expedited service pursuant to the  
20 1996 Act, the Petitioners' request is not appropriate for a Section 251  
21 arbitration, and it should not, therefore, be included in the Agreement. If  
22 BellSouth elects to offer this service in the Agreement, it should not be  
23 penalized for doing so by having TELRIC rates apply to a function that is not  
24 even contemplated by the Act.

25

1    ***Item 95; Issue 7-1: What time limits should apply to backbilling, over-billing, and***  
2    ***under-billing issues? (Attachment 7, Section 1.1.3)***

3

4    Q.     WHAT IS BELL SOUTH'S POSITION ON THIS ISSUE?

5

6    A.     BellSouth's issue statement reflects that all charges incurred under the  
7           agreement should be subject to the state's statute of limitations or applicable  
8           Authority rules. Billing in arrears, whether back billing (billing for services  
9           never previously billed), over-billing (issuing credits for services previously  
10          billed) or under-billing (billing additional amounts for services previously  
11          billed), should not be subject to a shorter limitations period than any other  
12          claims related to billing under the agreement. It is not appropriate to parse out  
13          certain situations. All billing issues should be subject to the same time  
14          limitations. Tennessee Statute §28-3-109 provides for a 6-year limitation to  
15          business transactions including back billing.

16

17   Q     THE CLECS STATE THAT BACKBILLING SHOULD BE LIMITED TO 90  
18          CALENDAR DAYS. IS THIS REASONABLE?

19

20   A     The CLECs' proposal is nonsensical and impractical. Due to the complexity of  
21          BellSouth's billing systems, 90 days is not a sufficient amount of time for the  
22          retrieval of billing data and records and any system programming to  
23          substantiate and support the back billing of under-billed charges. While  
24          BellSouth strives to bill incurred charges in a timely manner, it should not be  
25          forced to limit back billing to 90 days. Further, state statutes and/or Authority

1 Rules were instituted because these governmental bodies recognized that there  
2 are many legitimate situations in which back billing 6 months, one year or  
3 longer is appropriate to ensure that companies that provide services are  
4 allowed to be properly compensated.

5

6 *Item 97; Issue 7-3: When should payment of charges for service be due?*  
7 *(Attachment 7, Section 1.4)*

8

9 Q. WHAT IS BELL SOUTH'S POSITION ON THIS ISSUE?

10

11 A. Payment for services should be due on or before the next bill date (Payment  
12 Due Date) in immediately available funds.

13

14 Q. PLEASE PROVIDE RATIONALE FOR BELL SOUTH'S POSITION.

15

16 A First, the due date requirements as listed in the Access Tariff cannot be  
17 differentiated from the due dates for contract rates, both of which appear on the  
18 bill. Further, all customer due dates and treatments are generated the same  
19 way; therefore, it is not possible to do something different for one customer  
20 versus another. Any such change would require a work request, which would  
21 apply to all customers. In addition, BellSouth has no way to know when the  
22 customer actually receives the bill; thus, it is not reasonable to expect that  
23 treatment could be based upon the date the customer receives the bill.  
24 Furthermore, BellSouth offers electronic transmission of bills, which would  
25 allow Petitioners to receive bills sooner and allow more time for review.

1    ***Item 99; Issue 7-5: What recourse should a Party have if it believes the other Party***  
2    ***is engaging in prohibited, unlawful or improper use of its facilities or services,***  
3    ***abuse of the facilities or noncompliance with the Agreement or applicable tariffs?***  
4    ***(Attachment 7, Section 1.7.1)***

5  
6    Q.     WHAT IS BELL SOUTH'S POSITION ON THIS ISSUE?

7  
8    A     Each Party should have the right to suspend or terminate service in the event it  
9           believes the other party is engaging in one of these practices and the other  
10          party does not cease such activity promptly

11  
12   Q.     WHAT ACTION WOULD BELL SOUTH TAKE IN THE EVENT IT HAS  
13           EVIDENCE THAT A CLEC IS ENGAGING IN PROHIBITED,  
14           UNLAWFUL OR IMPROPER USE OF BELL SOUTH'S FACILITIES OR  
15           SERVICES, ABUSE OF THE FACILITIES OR NONCOMPLIANCE WITH  
16           THE AGREEMENT OR APPLICABLE TARIFFS?

17  
18   A     BellSouth's language states that BellSouth reserves the right to suspend or  
19           terminate service - not that BellSouth will take such action. If the CLEC fails  
20           to address the problem, then action will likely be taken BellSouth's tariffs  
21           define the type of activity addressed by this issue and such activity should not  
22           be taken lightly or allowed to continue for a protracted period of time.  
23           Listening in on party lines, impersonation of another with fraudulent intent,  
24           harassing phone calls, threatening calls, use of profane or obscene language,  
25           etc., are a few examples of the activities that could cause suspension or

1 termination of service if not immediately ceased or corrected Because  
2 BellSouth cannot suspend access to LENS on a service-by-service basis,  
3 suspension would necessarily impact the CLEC on all services On the other  
4 hand, termination of service can be accomplished on a service-by-service  
5 basis. BellSouth may decide to take action with respect to a specific service,  
6 but at the same time, if the situation is serious enough and the CLEC fails to  
7 take appropriate action or gives no indication that it intends to take action,  
8 BellSouth needs the ability to take the appropriate correction action through  
9 suspension or termination of the service.

10

11 *Item 100; Issue 7-6: Should CLEC be required to pay past due amounts in addition*  
12 *to those specified in BellSouth's notice of suspension or termination for*  
13 *nonpayment in order to avoid suspension or termination? (Attachment 7, Section*  
14 *1.7.2)*

15

16 Q WHAT IS BELL SOUTH'S POSITION ON THIS ISSUE?

17

18 A. Yes, if the CLEC receives a notice of suspension or termination from  
19 BellSouth as a result of the CLEC's failure to pay timely, the CLEC should be  
20 required to pay all amounts that are past due as of the date of the pending  
21 suspension or termination action

22

23 Q. PLEASE PROVIDE SUPPORT FOR YOUR POSITION.

24

25 A. By definition, the collections process is triggered when a customer does not



1 pay their bills according to the terms of the Agreement. Once a CLEC fails to  
2 meet its financial obligations and the matter is referred to collections, the risk  
3 associated with the customer is higher, based on the customer's own behavior.  
4 Under the Petitioners' proposed language, BellSouth would be limited to  
5 collecting the amount that was stated in the past due letter regardless of the  
6 customer's payment performance for subsequent bill cycles. BellSouth has the  
7 right and responsibility to protect itself from the higher risk associated with  
8 non-payment by insuring that customers are not allowed to continue to stretch  
9 the terms of the contract and increase the likelihood of bad debt

10

11 *Item 101; Issue 7-7: How many months of billing should be used to determine the*  
12 *maximum amount of the deposit? (Attachment 7, Section 1.8.3)*

13

14 Q. WHAT IS BELLSOUTH'S POSITION ON THIS ISSUE?

15

16 A. It is BellSouth's position that the average of two (2) months of actual billing  
17 for existing customers or estimated billing for new customers should be used to  
18 determine the maximum amount of the deposit. Such a deposit is consistent  
19 with the standard practice in the telecommunications industry and BellSouth's  
20 practice with its end users

21

22 *Item 102; Issue 7-8: Should the amount of the deposit BellSouth requires from*  
23 *CLEC be reduced by past due amounts owed by BellSouth to the CLEC?*  
24 *(Attachment 7, Section 1.8.3.1)*

25

1 Q. WHAT IS BELL SOUTH'S POSITION ON THIS ISSUE?

2

3 A. No, a CLEC's deposit should not be reduced by past due amounts owed by  
4 BellSouth to the CLEC. The CLEC's remedy for addressing non-disputed late  
5 payment by BellSouth should be suspension/termination of service or  
6 assessment of interest/late payment charges similar to BellSouth's remedy for  
7 addressing late payment by the CLEC KMC has already pursued one of these  
8 options with BellSouth – they can bill BellSouth for late payment charges  
9 today

10

11 BellSouth is within its rights to protect itself against uncollectible debts on a  
12 non-discriminatory basis BellSouth *must* protect against unnecessary risk  
13 while providing service to all requesting CLEC providers. The Petitioners are  
14 not faced with the same obligation.

15

16 *Item 103; Issue 7-9: Should BellSouth be entitled to terminate service to CLEC*  
17 *pursuant to the process for termination due to non-payment if CLEC refuses to*  
18 *remit any deposit required by BellSouth within 30 calendar days? (Attachment 7,*  
19 *Section 1.8.6)*

20

21 Q WHAT IS BELL SOUTH'S POSITION ON THIS ISSUE?

22

23 A Yes, BellSouth should be permitted to terminate service to a CLEC if the  
24 CLEC refuses to remit any deposit required by BellSouth within 30 calendar  
25 days. Thirty calendar days is a reasonable time period within which a CLEC

1           should meet its fiscal responsibilities.

2

3    Q.     PLEASE EXPLAIN BELLSOUTH'S POSITION.

4

5    A     The purpose of the deposit is to help mitigate BellSouth's risk as it provides  
6           services worth millions of dollars every month to CLECs. BellSouth has  
7           incurred losses on several occasions over the past few years where a CLEC, for  
8           one reason or another, did not or was unable to pay its bills. CLECs are valued  
9           customers, however, BellSouth has a responsibility to its shareholders and to  
10          its other customers to not assume unnecessary risk.

11

12    *Item 104; Issue 7-10: What recourse should be available to either Party when the*  
13    *Parties are unable to agree on the need for or amount of a reasonable deposit?*  
14    *(Attachment 7, Section 1.8.7)*

15

16   Q.     WHAT IS BELLSOUTH'S POSITION ON THIS ISSUE?

17

18   A.     If a CLEC does not agree with the amount or need for a deposit requested by  
19           BellSouth, the CLEC may file a petition with the Authority for resolution of  
20           the dispute and BellSouth would cooperatively seek expedited resolution of  
21           such dispute. BellSouth shall not terminate service during the pendency of  
22           such a proceeding provided that the CLEC posts a payment bond for the  
23           amount of the requested deposit during the pendency of the proceeding.

24

25   *Item 106; Issue 7-12: To whom should BellSouth be required to send the 15-day*

1    *notice of suspension for additional applications for service, pending applications for*  
2    *service and access to BellSouth's ordering systems? (Attachment 7, Section 1.91.)*

3

4    Q     WHAT IS BELLSOUTH'S POSITION ON THIS ISSUE?

5

6    A.     The initial 15-day computer-generated notice stating that BellSouth may  
7           suspend a CLEC's additional applications for service, pending applications for  
8           service and access to BellSouth's ordering systems should go to the  
9           individual(s) that the CLEC has identified as its Billing Contact(s).  
10          Subsequent notices, not system generated, of security deposits and suspension  
11          or termination of services shall be sent via certified mail to the individual(s)  
12          listed in the Notices provision of the General Terms and Conditions of the  
13          Agreement in addition to the CLEC's designed billing contact.

14

15   Q.     DOES THIS CONCLUDE YOUR TESTIMONY?

16

17   A.     Yes.